

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1327 of 2022

Applicant :- Rajesh (Second Bail)

Opposite Party :- State Of U.P Thru. Prin. Secy. Home Civil Secr. U.P. Lucknow

Counsel for Applicant :- Manoj Kumar Singh, Dhananjai Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. This is the second bail application.
2. The first bail application was rejected by Hon'ble Rajeev Singh, J on 14.09.2021, and the Court had directed the trial Court to conclude the trial of the case within a period of one year.
3. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
4. This bail application has been filed seeking release of the accused/applicant **Rajesh** on bail, who is involved in Case Crime No. 145 of 2018 under Sections 498-A, 304-B I.P.C & 3/4 Dowry Prohibition Act, Police Station Ikauna, District Shrawasti.
5. Learned counsel for the applicant submitted that inspite of the direction issued by this Court to conclude the trial within a period of one year vide order dated 14.09.2021, more than two years have lapsed and the trial is still pending in the trial Court. It is further submitted by learned counsel for applicant that the applicant has undergone almost five and a half years of his term of imprisonment and is languishing in jail since 15.05.2018.
6. Learned counsel for the applicant has further placed reliance of Hon'ble Apex Court judgments in the case of **Kamal Vs. State of Haryana, 2004 (13) SCC 526** and submitted that the Hon'ble Apex Court was pleased to observe in paragraph no. 2 of the judgment as under :-

"2. This is a case in which the appellant has been convicted u/s 304-B of the India Penal Code and sentenced to imprisonment for 7 years. It appears that so far the appellant has undergone imprisonment for about 2 years and four months. The High Court declined to grant bail pending disposal of the appeal before it. We are of the view that the bail should have been granted by the High Court, especially having regard to the fact that the appellant has already served a substantial

period of the sentence. In the circumstances, we direct that the bail be granted to the appellant on conditions as may be imposed by the District and Sessions Judge, Faridabad."

7. Learned counsel for the applicant has also placed reliance of Hon'ble Apex Court judgment in the case of **Takht Singh Vs. State of Madhya Pradesh, 2001 (10) SCC 463**, and submitted that the Hon'ble Apex Court was pleased to observe in paragraph no. 2 of the judgment as under:-

"2. The appellants have been convicted under Section 302/149, Indian Penal Code by the learned Sessions Judge and have been sentenced to imprisonment for life. Against the said conviction and sentence their appeal to the High Court is pending. Before the High Court application for suspension of sentence and bail was filed but the High Court rejected that prayer indicating therein that the applicants can renew their prayer for bail after one year. After the expiry of one year the second application was filed but the same has been rejected by the impugned order. It is submitted that the appellants are already in jail for over 3 years and 3 months. There is no possibility of early hearing of the appeal in the High Court. In the aforesaid circumstances the applicants be released on bail to the satisfaction of the learned Chief Judicial Magistrate, Sehore. The appeal is disposed of accordingly."

8. Learned counsel for the applicant has further relied on the judgment of the Hon'ble Apex Court in the case of **Union of India vs. K.A. Najeeb reported in AIR 2021 Supreme Court 712**. Para 16 of the judgment is being reproduced herein below:-

"This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail."

9. Learned counsel for applicant lastly submits that though the maximum punishment is life imprisonment but minimum punishment is of seven years. The applicant has already undergone five and half years of imprisonment and as there appears no chances of early conclusion of trial, the applicant may also be enlarged by this Court sympathetically on bail on the ground of delay in view of dictum of Hon'ble Supreme Court. Learned counsel for the applicant further stated that there is no previous criminal history of the applicant and he is languishing in jail since

15.05.2018.

10. Learned A.G.A has opposed the prayer of bail of the applicant and has submitted that it is a case of dowry death and the post-mortem report indicates that it is a case of strangulation, however, he could not dispute the fact that the applicant has undergone five and a half years of his term of imprisonment and the trial is still pending despite the direction of the Court.

11. Considering the facts and circumstances of the case, perusing the record, also considering the nature of allegations, arguments advanced by the learned counsel for the parties, period of incarceration which is five and a half years, the argument that despite the direction to the trial court, the trial is still pending, and in the light of judgments laid by Hon'ble Supreme Court (supra), I find it to be a fit case for grant of bail.

12. Accordingly, the bail application is **allowed**.

13. Let the applicant **Rajesh** be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against her under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient

cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

14. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 13.10.2023

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